Editor's note: Appealed -- dismissed upon joint motion, Civ.No. 86-5661 (ED. La. May 27, 1987)

ALLEN L. LOBRANO

IBLA 85-430 Decided September 25, 1986

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting oil and gas lease offer BLM 039708.

Affirmed.

1. Oil and Gas Leases: Competitive Leases--Oil and Gas Leases: First-Qualified Applicant--Oil and Gas Leases: Known Geologic Structure--Oil and Gas Leases: Noncompetitive Leases--Oil and Gas Leases: Offers to Lease

   A noncompetitive offer to lease for oil and gas filed in 1955 at a time when the Department's policy allowed issuance of a noncompetitive lease for lands within a known geologic structure is properly rejected in 1985 in accordance with 43 CFR 3110.3(a). No vested right to lease issuance is gained by the filing of an offer to lease.

APPEARANCES: Andrew McCollam, III, New Orleans, Louisiana, for appellant.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Allen L. Lobrano appeals from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated January 22, 1985, rejecting his noncompetitive oil and gas lease offer BLM 039708. This offer described 801 acres in T. 24 S., Rs. 30-31 E., Louisiana Meridian, Plaquemines Parish, Louisiana. BLM rejected the instant offer because it found the described lands to be within a known geological structure (KGS) of a producing oil and gas field and held, accordingly, that such lands were not available for noncompetitive leasing.

In support of its holding, BLM cited regulation 43 CFR 3110.3(a), which provides in relevant part:

> If, prior to the time a noncompetitive lease is issued, all or part of the lands in the offer are found to be within a known geological structure of a producing oil or gas field * * *, the offer shall be rejected in whole or in part as to such lands, as appropriate.

The relevance of this regulation is revealed by the following additional facts.

Oil and gas lease offer BLM 039708 was filed with BLM on February 17, 1955, almost 30 years prior to the decision on appeal. 1/ At the time the offer was filed, the lands so described were not within a KGS. Effective February 25, 1959, however, 2/ the lands were apparently included within the undefined KGS of the West Delta Block 83 Field.

Lobrano objects to BLM's rejection of lease offer BLM 039708 because this offer, filed prior to BLM's designation of the subject lands as within a KGS, created a "binding priority that the lands be leased to Lobrano, if leased at all, and if he was the first qualified applicant, provided that they were not within a known structure 'at the time the offer was filed'" (Statement of Reasons at 6 (footnote omitted)). Appellant further contends a 1982 communication from BLM, requiring him to pay additional rental for his still-pending offer, recognized the subject lands were not within a KGS and a lease had been or would be issued. Finally, appellant argues that BLM's receipt of and failure to return the rental remittances as unpaid further confirms the inappropriateness of BLM's rejection of lease offer BLM 039708.

In support of his first argument, Lobrano quotes from the lease offer form 3/ on which his 1955 offer was filed. Paragraph 6, part b, of this form states: "[T]his offer and lease shall apply only to lands not within a known geologic structure of a producing oil or gas field at the time the offer is filed." (Emphasis supplied.) Lobrano further quotes from special instructions, item 4, which provide in relevant part: "Where at the time the lease is to be issued, the land applied for or any part of it is within a known geologic structure of a producing oil or gas field, the lessee will be billed for the additional rental of 50 cents an acre on all the leased land as the yearly rental on such lands is $ 1 per acre."

The above-quoted language contemplates that KGS lands could in 1955 be leased noncompetitively if the KGS determination was made after a lease offer was filed and prior to lease issuance. Such, in fact, was the policy of the Department at that time. In 1967, however, this policy was changed to reflect that embodied in regulation 43 CFR 3110.3(a), and the Mineral Leasing Act. Solicitor's Opinion, 74 I.D. 285 (1967).

Section 17(b) of the Mineral Leasing Act of February 25, 1920, as amended, 30 U.S.C. § 226(b) (1982), provides in part: "If the lands to be

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1/ The record offers no explanation for the delay and we will not speculate as to possible reasons.
2/ A brief memorandum from the District Manager, Southeast District, Jackson, Mississippi, dated Jan. 8, 1985, states: "All of the lands included in the attached lease application are within the boundaries of the undefined known geologic structure of the West Delta Block 83 Field, Plaquemines Parish, Louisiana that was effective February 25, 1959. These lands should be offered on a competitive basis."
3/ Appellant's offer was submitted on form No. 4-1158, fifth edition (Sept. 1954).

leased are within any known geological structure of a producing oil or gas field, they shall be leased to the highest responsible qualified bidder by competitive bidding." (Emphasis supplied.) Section 17(c) of the Act provides for lands not within a KGS: "If the lands to be leased are not subject to leasing under subsection (b) of this section, the person first making application for the lease who is qualified to hold a lease under this chapter shall be entitled to a lease of such lands without competitive bidding."

In the 1967 opinion cited above, the Solicitor stated the issuance of a noncompetitive lease for lands on a KGS determined after the offer is filed and before lease issuance is inconsistent with the Act and completely at variance with the Department's interpretation of comparable provisions of the Act. 74 I.D. at 285-86. The issuance of a lease in such circum- stances, the Solicitor continued, necessarily rests upon an assumption that a qualified person filing an offer for a noncompetitive oil and gas lease thereby acquires a vested right in the lands covered by the offer.

The Department, however, has consistently held the filing of an offer for a noncompetitive lease creates no vested rights in the offeror. Haley v. Seaton, 281 F.2d 620, 624 (D.C. Cir. 1960); United States ex rel Roughton v. Ickes, 101 F.2d 248, 252 (D.C. Cir. 1938). All the offeror has is a preferential right to a noncompetitive lease if one should be issued. He has no vested right to have such a lease issued. Solicitor's Opinion, 74 I.D. at 289.

Contrary to appellant's suggestion, BLM has at no time issued a lease in response to appellant's offer. Lease issuance occurs when the lease is signed by the authorized officer. 43 CFR 3110.1-2. James M. McDade, 3 IBLA 226 (1971), aff'd, McDade v. Morton, 494 F.2d 1156 (D.C. Cir. 1974). Thus, appellant's offer remained outstanding as an offer in 1967 when the Department's position was changed to reflect the policy set forth in 43 CFR 3110.3(a). As mentioned above, this offer afforded appellant no vested right in the lands sought. When the Department's position was changed in 1967, BLM could not properly accept the terms included in paragraph 6, part b, of appellant's offer or in item 4 of the special instructions. This outstanding offer continued to provide appellant with no vested right in the lands sought.

Because the Department will, under no circumstances, presently issue a noncompetitive lease for lands determined to be on a KGS, appellant's preference right, as discussed above, provides him no benefit.

Appellant's second argument on appeal refers to an October 27, 1982, decision from BLM requiring appellant to pay additional rent. This decision noted the rent for all leases issued after February 1, 1977, was $1 per acre and not $0.50 per acre as appellant had included with his offer. Given the fact the relevant KGS determination had been made in 1959, it is difficult to understand why this 1982 decision issued. What is clear, however, is that this decision could not entitle appellant to the grant of a lease when both statute and regulation expressly forbade it. 30 U.S.C. § 226(b) (1982); 43 CFR 3110.3(a).

Nor does BLM's receipt of advance rental vest any right to lease issuance in appellant. Geral Beveridge, 14 IBLA 351 (1974). BLM is instructed to return all amounts paid as rent for offer BLM 039708.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Eastern States Office is affirmed.

John H. Kelly
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

R. W. Mullen
Administrative Judge.